

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #1	CCRB Case #: 201603830	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 04/28/2016 11:00 PM	Location of Incident: New Lots Avenue and Malta Street; 75th Precinct stationhouse; en route to § 87(2)(b) Hospital	Precinct: 75	18 Mo. SOL 10/28/2017	EO SOL 10/28/2017	
Date/Time CV Reported Wed, 05/04/2016 9:32 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/04/2016 9:32 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Seder	06788	947479	075 PCT
2. SGT Henry Daverin	03631	945645	075 PCT
3. POM Christophe Walsh	23571	951413	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Henry Daverin	Discourtesy: At New Lots Avenue and Malta Street in Brooklyn, Sergeant Henry Daverin spoke discourteously to § 87(2)(b)	
B.POM James Seder	Force: At New Lots Avenue and Malta Street in Brooklyn, Police Officer James Seder used physical force against § 87(2)(b)	
C.POM James Seder	Abuse: At New Lots Avenue and Malta Street in Brooklyn, Police Officer James Seder questioned § 87(2)(b)	
D.POM Christophe Walsh	Abuse: En route to and at the 75th Precinct stationhouse, Police Officer Christopher Walsh refused to provide his name and shield number to § 87(2)(b)	
E.SGT Henry Daverin	Abuse: En route to and at the 75th Precinct stationhouse, Sergeant Henry Daverin refused to provide his name and shield number to § 87(2)(b)	
F.POM Christophe Walsh	Force: At the 75th Precinct stationhouse, Police Officer Christopher Walsh used physical force against § 87(2)(b)	
G.SGT Henry Daverin	Force: At the 75th Precinct stationhouse, Sergeant Henry Daverin used physical force against § 87(2)(b)	
H.POM Christophe Walsh	Abuse: En route to § 87(2)(b) Hospital, Police Officer Christopher Walsh refused to provide his name and shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On April 28, 2016, at approximately 11:00 p.m., § 87(2)(b) was walking with his brother, § 87(2)(b) and friends, including § 87(2)(b) in the vicinity of New Lots Avenue and Alabama Avenue in Brooklyn. § 87(2)(b) and § 87(2)(b) separated from the group. Sgt. Henry Daverin, PO James Seder, and PO Christopher Walsh, of the 75th Precinct Anti-Crime Team, approached § 87(2)(b) and § 87(2)(b) in the vicinity of New Lots Avenue and Malta Street after observing § 87(2)(b) spit on the sidewalk. When the officers requested § 87(2)(b) ID and explained their reason for approaching him, § 87(2)(b) protested, and Sgt. Daverin reportedly replied, “Fuck that” (**Allegation A**). The officers then grabbed § 87(2)(b) and backed him toward a fence as they attempted to handcuff him. A physical struggle ensued. PO Seder allegedly grabbed § 87(2)(b) right leg and pulled it out from under him, causing § 87(2)(b) to fall to the ground and strike his face on the sidewalk (**Allegation B**). § 87(2)(b) was handcuffed while on the ground.

§ 87(2)(b) was standing side by side with § 87(2)(b) as § 87(2)(b) struggled with the officers. At some point during the struggle, § 87(2)(b) identified himself as § 87(2)(b) brother, and PO Seder then requested his ID (**Allegation C**). § 87(2)(b) provided it, and it was quickly returned by PO Seder. § 87(2)(b) was not arrested or summonsed.

§ 87(2)(b) was placed in the officers’ RMP and transported to the 75th Precinct stationhouse. While en route, § 87(2)(b) asked PO Walsh and Sgt. Daverin for their names and shield numbers. They reportedly responded that their information would be on § 87(2)(b) paperwork (**Allegations D and E**).

Upon arrival at the 75th Precinct stationhouse, the officers opened the door, and § 87(2)(b) fainted. He was unable to move his legs and fell out of the RMP. PO Walsh and Sgt. Daverin allegedly dragged § 87(2)(b) by his knees into the stationhouse (**Allegations F and G**). While inside the cell area, § 87(2)(b) asked PO Walsh and Sgt. Daverin for their names and shield numbers, to which they again allegedly replied that this information would be on the paperwork. § 87(2)(b) stated that he wanted to hear this information from them directly, but both reportedly repeated that the information would be on the paperwork (**also Allegations D and E**). § 87(2)(b) was transported from the stationhouse to § 87(2)(b) Hospital, and he alleged that PO Walsh refused to provide his name and shield number en route (**Allegation H**). § 87(2)(b) was ultimately arrested and charged with resisting arrest, OGA, disorderly conduct, and violation of a local law.

§ 87(2)(b) submitted video for this incident, which he recorded with his cellular phone.

Mediation, Civil and Criminal Histories

§ 87(2)(b) was arrested and was not issued a DAT. As such, this case was not suitable for mediation.

A Notice of Claim has not been filed in regards to this incident as of July 14, 2016 [01 Board Review].

§ 87(2)(b) criminal case stemming from this incident is pending. Neither he nor § 87(2)(b) has any prior convictions [02 Board Review].

Civilian and Officer CCRB Histories

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

This is the first CCRB case involving § 87(2)(b) [03 Board Review].

This is the third CCRB complaint filed against PO Walsh during his five year tenure. He has not previously been the subject of a physical force allegation, nor has it previously been alleged that he refused to provide his name or shield number. One of his cases is currently pending Board review, and there are no recommended substantiations. The other case is under investigation.

This is the 17th CCRB case filed against Sgt. Daverin during his eight year tenure. He has been the subject of physical force allegations in six cases since 2012. None of those allegations have been substantiated against him. Sgt. Daverin has been the subject of discourtesy allegations on three occasions since 2012, and all three allegations included the word “fuck”. Two of those cases were truncated, and the other is pending investigation. It has also been alleged twice since 2012 that Sgt. Daverin refused to provide his name and shield number. In case 201205977, that allegation was closed as unsubstantiated, while the allegation in case 201502623 was closed as substantiated.

This is the fifth CCRB complaint filed against PO Seder in his eight year tenure. He has not previously been the subject of a question allegation. In case 201303047, a physical force allegation against him was closed as exonerated.

Findings and Recommendations

Allegation A – Discourtesy: At New Lots Avenue and Malta Street in Brooklyn, Sergeant Henry Daverin spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that the officers approached him, and that only Sgt. Daverin requested his ID. § 87(2)(b) reportedly replied yes but also asked what for. Sgt. Daverin informed § 87(2)(b) that he had spit, prompting § 87(2)(b) to question whether that was a crime. Sgt. Daverin replied that it was a health crime, at which point § 87(2)(b) said, “Come on.” According to § 87(2)(b) Sgt. Daverin replied, “Fuck that,” just before attempting to handcuff him [04 Board Review].

§ 87(2)(b) also stated that an officer stated, “Fuck that,” during the incident, though he did not know what this was in reference to. § 87(2)(b) did not specify when this statement was made or who said it [05 Board Review].

§ 87(2)(b) friend, § 87(2)(b) stated that he was with § 87(2)(b) and § 87(2)(b) but stopped in a nearby store. From a distance of about a block, he observed the officers exit their RMP and speak with § 87(2)(b) He stated that he heard § 87(2)(b) ask why the officers

were trying to lock him up for spitting but did not mention any profanity used by officers [06 Board Review].

The video submitted by § 87(2)(b) did not capture this portion of the incident [07 Board Review].

Sgt. Daverin stated that he and his partners approached § 87(2)(b) with the intent of issuing a summons for spitting in public, which was a health code violation. Sgt. Daverin did not remember which officer first asked § 87(2)(b) for his ID, but § 87(2)(b) responded with something to the effect of, “Fuck that. I’m not giving you shit.” § 87(2)(b) was then given about three lawful orders to provide his ID, but he reportedly refused to do so. Sgt. Daverin revealed that he informed § 87(2)(b) of the violation he had committed, and that § 87(2)(b) argued that it was a fucking joke. Sgt. Daverin testified that he replied with another request for § 87(2)(b) ID and denied saying “fuck that” at any point during the exchange or at any other time during the incident [08 Board Review].

PO Seder and PO Walsh consistently testified that § 87(2)(b) refused to provide his ID several times, and that his verbal refusal included the word “fuck.” PO Seder added that § 87(2)(b) yelled at that time. Both PO Seder and PO Walsh denied that any officer said, “Fuck that” to § 87(2)(b) or used any profanity toward him during the incident [09-10 Board Review].

§ 87(2)(b), § 87(2)(g)

Allegation B – Force: At New Lots Avenue and Malta Street in Brooklyn, Police Officer James Seder used physical force against § 87(2)(b)

§ 87(2)(b) testified that Sgt. Daverin grabbed his left arm and pulled it behind his back immediately after using the discourteous language mentioned above. Then, Sgt. Daverin placed a handcuff on his wrist. PO Walsh reportedly grabbed his right arm and shoulder at about the same time, and PO Walsh and Sgt. Daverin worked in tandem to push § 87(2)(b) toward a black gate. According to § 87(2)(b) he was not asked for ID more than once, and the officers immediately became physically aggressive as described above.

As § 87(2)(b) faced the gate, he asked the officers why he was being arrested. They replied, “For spitting.” At that moment, § 87(2)(b) did not know where PO Seder was, but he heard Sgt. Daverin tell an officer to grab his legs. § 87(2)(b) reported that he was briefly confused as various individuals from nearby houses had come out to observe his arrest. He stated that PO Seder then grabbed his right leg and pulled it out from under him suddenly, causing him to fall to

the ground and strike his face on the sidewalk. § 87(2)(b) revealed that he suffered a bruise to the upper portion of his left cheek, and that his mouth was bleeding, possibly from his lips, cheek, or teeth. § 87(2)(b) denied that he resisted the officers aside from briefly tensing his arms as he asked why he was being arrested, and he asserted that he was against the gate for only two to three seconds before being taken to the ground. § 87(2)(b) was handcuffed while on the ground.

Later, while at the stationhouse, § 87(2)(b) requested an ambulance because his tooth was hurting badly. Although § 87(2)(b) acknowledged that he had cavities, for which he previously visited a dentist, he believed that the pain stemmed from when PO Seder took him to the ground. A dentist examined § 87(2)(b) at § 87(2)(b) Hospital and found that his tooth was not loose. § 87(2)(b) reported that he also suffered cuts to his wrists and a bruise to his cheek, and that a doctor told him that these wounds would heal with time. He added that these injuries were not documented by the hospital [04 Board Review].

§ 87(2)(b) arrest photo captured a small bruise on his left cheek [11 Board Review].

The FDNY Ambulance Care Report prepared for § 87(2)(b) stated his chief complaint was a loose tooth. The document also noted a minor laceration to his mouth. § 87(2)(b) medical documents from § 87(2)(b) Hospital featured his complaint that he was pushed to the ground and struck his face on the ground. He complained of pain to both cheeks. § 87(2)(b) was diagnosed with a cavity [See Privileged Medical Documents].

§ 87(2)(b) stated that he had a few alcoholic drinks prior to this incident and was “feeling nice.” § 87(2)(b) stated that § 87(2)(b) was taken to the ground by the officers, possibly after being handcuffed. When asked to clarify how the officers performed this action, § 87(2)(b) specified that the officers “tussled” § 87(2)(b) to the ground, and that § 87(2)(b) landed face down. § 87(2)(b) did not remember which officer did this [05 Board Review].

§ 87(2)(b) denied seeing § 87(2)(b) on the ground. He also stated that he observed no injuries to § 87(2)(b) person. The video he submitted did not capture this portion of the incident [06 Board Review].

PO Seder testified that § 87(2)(b) refused to provide his ID twice, and that an officer ordered him to place his hands behind his back following the second refusal. According to PO Seder, § 87(2)(b) immediately backed up and grabbed a chain link fence with both hands. He denied that § 87(2)(b) was pushed against the fence but later testified that he did not remember if § 87(2)(b) backup up of his own volition or if he was pushed there as a result of physical contact with officers. PO Seder stated that he and his partners told § 87(2)(b) to let go of the fence, and that § 87(2)(b) also urged § 87(2)(b) to cooperate, but § 87(2)(b) did not comply. It reportedly took the officers 15 to 20 seconds to pull § 87(2)(b) from the fence, at which point § 87(2)(b) tensed his arms and body to prevent the officers from pulling his arms behind his back.

PO Seder described that the officers took § 87(2)(b) to the ground because they were unsuccessful in controlling him while standing. However, he did not remember how § 87(2)(b)

was taken to the ground. PO Seder denied grabbing § 87(2)(b) legs and pulled them out from under him, or that any officer instructed him to grab § 87(2)(b) legs. PO Seder asserted that he had a grip on § 87(2)(b) torso just before he went to the ground. He did not remember if he ever gripped § 87(2)(b) legs. PO Seder did not remember how § 87(2)(b) landed but denied seeing him strike his face on the ground [09 Board Review].

PO Walsh's testimony was generally consistent with PO Seder's. He also testified that the officers moved in to handcuff § 87(2)(b) only after he refused to provide his ID several times, and that § 87(2)(b) grabbed onto the fence as he resisted being handcuffed. The officers reportedly struggled with § 87(2)(b) for 30 seconds to a minute before PO Seder went lower on § 87(2)(b) body, near his waist, and the officers took § 87(2)(b) to the ground. PO Walsh stated that he believed that this maneuver was learned in training, though he was unable to describe what exactly PO Seder did as he was focused on § 87(2)(b) arm. PO Walsh did not remember if Sgt. Daverin instructed PO Seder to grab § 87(2)(b) legs. § 87(2)(b) reportedly landed on his stomach. PO Walsh denied seeing him strike his face on the ground [10 Board Review].

Sgt. Daverin also testified that § 87(2)(b) refused to produce his ID, and he added that § 87(2)(b) waved his arms as he spoke after the officers ordered him to put his hands behind his back. Sgt. Daverin reported that he then grabbed § 87(2)(b) arm. He did not remember where his partners made physical contact with § 87(2)(b) but stated that § 87(2)(b) resisted violently by pushing off of the officers, grabbing a hold of the fence, and attempting to scale the fence to escape. Sgt. Daverin did not remember how § 87(2)(b) came to be against the fence but stated that he was only an arm's length away from it in the first place. According to Sgt. Daverin, the officers struggled with § 87(2)(b) for two to three minutes before handcuffing him. When asked if § 87(2)(b) was taken to the ground at any point, Sgt. Daverin stated that he was sure that he was. However, he denied having any specific memory of § 87(2)(b) being taken to the ground or instructing any officer to grab § 87(2)(b) legs. Sgt. Daverin did not remember if he saw § 87(2)(b) on the ground at any point. He denied seeing § 87(2)(b) strike his face against any object [08 Board Review].

Patrol Guide procedure 203-11 requires that an officer use the minimum force necessary to overcome physical resistance [24 Board Review].

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation C – Abuse of Authority: At New Lots Avenue and Malta Street in Brooklyn, Police Officer James Seder questioned § 87(2)(b)

§ 87(2)(b) testified that he was standing side by side with § 87(2)(b) when the struggle between § 87(2)(b) and the officers began. He also stated that PO Seder guided him away from the struggle with his arm and told him to back off. § 87(2)(b) reportedly identified himself as § 87(2)(b) brother, at which point PO Seder asked him for his ID. § 87(2)(b) provided his ID, which the officer held for only a few seconds. § 87(2)(b) believed that the exchange happened so quickly that the officer did not have time to read it. According to § 87(2)(b) PO Seder did not explain why he wanted his ID, nor did he record any information from it or ask § 87(2)(b) for his phone number [05, 12-13 Board Review].

§ 87(2)(b) testified that § 87(2)(b) asked the officers why § 87(2)(b) was being arrested but denied that § 87(2)(b) had any other interaction with the officers [04, 14 Board Review].

§ 87(2)(b) made no mention of any officer requesting § 87(2)(b) ID. § 87(2)(b)'s video captured footage of Sgt. Daverin telling § 87(2)(b) to back up from the rear of the RMP because he was interfering with the officers' duties, but it did not capture footage of PO Seder requesting § 87(2)(b) ID [06-07 Board Review].



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PO Seder testified that he asked § 87(2)(b) for his ID at some point before leaving for the stationhouse. He reported that he did this because § 87(2)(b) had stated that he was § 87(2)(b) brother, and that he wanted to make certain that if § 87(2)(b) was, in fact, § 87(2)(b) brother, he had contact information for § 87(2)(b) in case § 87(2)(b) wanted to contact him later. PO Seder stated that he typically takes this measure when family members are present at the scene of an arrest. PO Seder revealed that he did not actually learn whether § 87(2)(b) and § 87(2)(b) were biological brothers. According to PO Seder, he and § 87(2)(b) had no other conversation. He testified that there were no other factors influencing his decision to request § 87(2)(b) ID, and he did not suspect § 87(2)(b) of having committed a crime. PO Seder made no mention of having requested § 87(2)(b) phone number, and his memo book contained no entries concerning § 87(2)(b) [09, 18 Board Review].

PO Walsh acknowledged that he observed a conversation between § 87(2)(b) and PO Seder prior to PO Seder helping place § 87(2)(b) in the RMP. However, he did not know what they talked about, and he did not remember PO Seder requesting § 87(2)(b) ID. PO Walsh denied seeing PO Seder with an ID in his hand at any point. Although he stated that § 87(2)(b) was part of an argument in the group he observed earlier, just prior to § 87(2)(b) spitting on the ground, he stated that he did not find the argument to have been anything criminal. PO Walsh denied suspecting § 87(2)(b) of having committed a crime [10 Board Review].

reported that he responded verbally, “Officer Walsh, 23571.” PO Walsh stated that PO Seder also verbally provided his information, and that no officer told § 87(2)(b) that his information would be on the paperwork in lieu of providing the information verbally. PO Walsh did not hear § 87(2)(b) ask Sgt. Daverin for his name or shield number. According to PO Walsh, § 87(2)(b) made no complaints about being unable to obtain an officer’s name or shield number [10 Board Review].

Sgt. Daverin did not remember § 87(2)(b) asking for his name and shield number while en route to or at the stationhouse, or at any other point during the incident. Sgt. Daverin denied refusing to provide this information to § 87(2)(b) and did not hear any officer do so. Sgt. Daverin stated that he did not tell § 87(2)(b) that his identifying information would be on paperwork in lieu of providing it verbally. Like PO Walsh, Sgt. Daverin testified that § 87(2)(b) made no complaints about being unable to ascertain an officer’s name or shield number [08 Board Review].

PO Seder made no mention of § 87(2)(b) requesting his or any other officer’s name or shield number. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F – Force: At the 75th Precinct stationhouse, Police Officer Christopher Walsh used physical force against § 87(2)(b)

Allegation G – Force: At the 75th Precinct stationhouse, Sergeant Henry Daverin used physical force against § 87(2)(b)

§ 87(2)(b) testified that he was frustrated and moved around the RMP, and that he experienced pain from the tightness of the handcuffs. He reported that he attempted to exit the RMP when they arrived at the 75th Precinct stationhouse, and that he got a “head rush,” was unable to move his legs, fainted, and fell out of the RMP. § 87(2)(b) stated that he then heard the officers call

him an actor, and that PO Walsh and Sgt. Daverin grabbed him by his biceps and dragged him into the stationhouse. § 87(2)(b) reported that his knees and feet dragged on the ground for a distance of about 100 feet. § 87(2)(b) described no injuries as a result. He denied refusing to stand up. Although the officers walked quickly, § 87(2)(b) did not ask them to slow down [04 Board Review].

§ 87(2)(b) medical records contained no documentation of a loss of consciousness. There was no recording of § 87(2)(b) having lodged any complaint about an officer dragging him to the stationhouse. There were also no stated or documented injuries to his knees or feet [see Privileged Medical Documents].

PO Seder, PO Walsh, and Sgt. Daverin all testified to having no memory of seeing § 87(2)(b) faint or of any officer dragging him into the stationhouse. Similarly, all of the officers testified that § 87(2)(b) did not require any assistance to walk from their RMP to the stationhouse. No officer cited any issues in escorting § 87(2)(b) from their RMP to the cell area, and although all of the officers ultimately acknowledged that § 87(2)(b) was removed to a hospital from the stationhouse, none of them stated anything to suggest that a loss of consciousness or fainting played a role in that decision. Rather, they testified that an ambulance was summoned at the request of § 87(2)(b) who complained that he had a facial injury [08-10 Board Review].

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation H – Abuse of Authority: En route to § 87(2)(b) Hospital, Police Officer Christopher Walsh refused to provide his name and shield number to § 87(2)(b)

In discussing the refusals to provide identifying information mentioned in allegations D and E, § 87(2)(b) also mentioned that he requested PO Walsh's name and shield number while in the ambulance en route to § 87(2)(b) Hospital. § 87(2)(b) testified that PO Walsh replied that his information would be on the paperwork and did not provide it verbally [16 Board Review].

§ 87(2)(b) medical records from § 87(2)(b) Hospital revealed that an officer with shield number 25402 was present with him. A search of CTS revealed that this shield number belongs exclusively to PO Chris Whitehead of the 75th Precinct. PO Whitehead's MOS photo revealed that he is a § 87(2)(b) white male who stands § 87(2)(b) [see Privileged Medical Documents, 17 Board Review].

None of the three officers had a memo book entry about escorting § 87(2)(b) to the hospital, though PO Seder's noted the EMT's shield number. Sgt. Daverin's memo book contained no

entries for this incident. Neither § 87(2)(b) arraignment history nor the Command Log noted which officer transported § 87(2)(b) to the hospital [18-22 Board Review].

PO Walsh testified that he did not accompany § 87(2)(b) to the hospital. He did not know which officer did, but he believed that it was not a member of the Anti-Crime Team. PO Seder also denied knowing which officer accompanied § 87(2)(b) to § 87(2)(b) Hospital but asserted that it was not an Anti-Crime officer [09-10 Board Review].

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(g), § 87(4-b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED].

Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date